

116584

19704

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203206

DATE: October 9, 1981

MATTER OF: Kentucky Building Maintenance, Inc.

DIGEST:

1. When doubt exists as to when protester knew or should have known basis for protest, doubt is resolved in favor of protester.
2. GAO will not conduct independent investigation to establish validity of protester's statements since burden is on protester to provide evidence necessary to support its case. This burden has not been met where Administrative Review Board's decision reasonably sustains determination to continue performance in-house.

Kentucky Building Maintenance, Inc. (KBM), protests the denial by the United States Army Health Services Command Administrative Review Board of KBM's appeal of the Army's decision to continue to perform hospital custodial services on an in-house basis at the United States Army Medical Department Activity (MEDDAC), West Point, New York. KBM requests that we perform a detailed audit and review to determine the validity of the Army's manpower projections and cost estimates.*

We find the protest to be without merit.

The Army solicited proposals under request for proposals (RFP) No. DAAG60-80-R-0063 for the furnishing of hospital custodial services at MEDDAC. The solicitation notified offerors that after completion of the evaluation of proposals and negotiation and selection

*Review of this protest is undertaken pursuant to our decision in Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38, as an exception to our general rule against reviewing decisions to perform work in-house as involving a policy matter for resolution by the executive branch.

116584

01889

of the most advantageous proposal, a cost comparison between that proposal and an in-house cost estimate would determine whether the work would be contracted out or remain in-house. KBM and other firms submitted proposals and KBM's was determined most advantageous to the Government. After a comparison with the Government's in-house cost estimate, KBM's proposal was found to be high. KBM was notified that the contracting officer was recommending that the services be continued to be performed in-house. KBM appealed the recommendation to the Army's Administrative Review Board. The Board partially sustained the appeal, but determined that the contracting officer's recommendation to perform the work in-house should be sustained, KBM then protested to this Office.

As a preliminary matter, the Army takes the position that KBM's protest is untimely. It argues that since KBM was advised by a letter dated April 30, 1981, that its appeal had been denied, the protest, filed in our Office on May 19, 1981, was filed more than 10 working days after KBM knew of the basis for the protest. See 4 C.F.R. § 21.2(b)(2) (1981).

We note that the record does not indicate when KBM received the Army's notice of denial. When doubt exists as to when a protester knew or should have known the basis for its protest, we resolve that doubt in favor of the protester. Memorex Corporation, 57 Comp. Gen. 865, 867 (1978), 78-2 CPD 236. Therefore, we consider KBM's protest timely filed.

KBM contends that the Army's man-hour projections were defective in that it failed to provide for the manning level needed to maintain the cleaning frequencies specified in the RFP. Further, KBM alleges that the Army's charge for the utilization of Government capacity was "grossly overstated" and its figure for net proceeds from disposal of equipment was "severely understated." KBM argues that, but for these errors, its offer would have been lower than the Army's in-house cost estimate.

The Army responds that its man-hour projections are reasonably based and that the approach advanced by KBM would require a double application of the leave factor. With respect to its figure for utilization

of Government capacity, the Army contends that certain overhead costs are partially allocable to the service being contracted out. These costs, it says, must then be absorbed by the remaining in-house activities and, therefore, are a cost of contracting out. Regarding the figure for the resale value of the equipment, the Army states that the figure was taken from salvage figures provided by the Defense Property Disposal Service. Finally, the Army argues that all the disputed costs and projections have been verified by audit as reasonably accurate.

We conclude that KBM has failed to present the information and evidence necessary to substantiate its allegations. Aside from KBM's contentions, there is no indication in the record that the Army's estimate is incorrect. To the contrary, the record indicates that the Army performed a detailed audit of its estimate to insure conformance with applicable guidelines and the RFP specifications. In addition, as noted previously, the Administrative Review Board, comprised of four voting members and a president, reviewed the specific objections of KBM against the responses of the contracting activity and its detailed estimate and audit and sustained the decision to continue performance in-house. We have examined the material considered by the Board and find its decision reasonable.

We have repeatedly held that the burden of proof is on the protester to affirmatively prove its case. We do not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's assertions. Tri-States Service Company, B-195642, January 8, 1980, 80-1 CPD 22.

Accordingly, the protest is denied.



Acting Comptroller General
of the United States